



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION UPON REHEARING

MRA/153656

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on December 19, 2013, at Waukesha, Wisconsin.

On February 21, 2014, Petitioner's spouse, on behalf of Petitioner, filed a request for rehearing that was granted on March 10, 2014. However, no hearing was convened for the purposes of taking testimony, because the rehearing was granted upon a finding of a material error of law. The decision issued here corrects that error. Amended language is found in bold print.

The February rehearing request has been marked as Exhibit 6 and entered into the record. Petitioner's spouse submitted an additional packet on March 17, 2014. It has been marked as Exhibit 7 and entered into the record.

The issue for determination is whether the Minimum Monthly Maintenance Needs Allowance / Community Spouse Income Allocation may be increased for Petitioner's Spouse.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney John Sage  
2835 South Moorland Road  
New Berlin, WI 53151-3743

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Shawn Carlson, Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii

## Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On October 20, 2013, the agency sent Petitioner a notice indicating that his application for Institution Long-Term Care Medicaid was approved with a patient liability of \$1650.80 **as of August 1, 2013.** (Exhibit 2, pgs. 6-11; Exhibit 3)
3. The agency determined the Community Spouse Income Allocation to be \$237.20. (Exhibit 3)
4. Attorney Sage filed a request for fair hearing on behalf of Petitioner, that was received by the Division of Hearings and Appeals on November 22, 2013. (Exhibit 1)
5. Petitioner's income is \$1933.00 per month from Social Security. (Exhibit 2, pgs. 1 and 9; Exhibit 3)
6. Petitioner's wife has income of \$2,660.80 per month from her employment. (Id.)

**DISCUSSION**

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. The cost of care is referred to as a patient liability amount when applied to a resident of a medical institution. *Medicaid Eligibility Manual (MEH)*, §27.7.1

The cost of care is calculated by taking the institutionalized person's gross income and deducting the following amounts, if they apply:

1. Personal Needs Allowance (\$45.00 for everyone)
2. Community Spouse Income Allocation
3. Dependent Family Member Allocation
4. Court Ordered Guardian or Attorney Fees or Special Exempt Income
5. Medical/Remedial Cost and Cost of Person's Health Insurance Premiums

*MEH §27.7.1 and §18.6.1*

There is no assertion and no evidence that Petitioner has any dependents other than his spouse. It is undisputed that Petitioner's daughter is no longer a minor and is attending college.

There is no assertion that Petitioner has court ordered guardian or attorney fees or other special exempt income.

The deduction with which Petitioner seemed to be most concerned was the Community Spouse Income Allocation.

*Community Spouse Income Allocation*

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of her income to her spouse so that he does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see MEH §§18.1 and 18.6.1*. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA currently is the **lesser** of \$2,898 or \$2,585 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$775.50. *Id.* Administrative law judges (ALJs) have the authority to

increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added.*

In Petitioner's case, the MMMNA is \$2,898, unless it can be shown that Petitioner's basic and necessary maintenance needs require a higher MMMNA. Petitioner's spouse essentially asked that her expenses be examined and that the MMMNA be increased. Petitioner's spouse claimed the following monthly expenses for herself in a spreadsheet attached to Exhibit 5:

1. Wisconsin Mutual Auto Insurance	\$76.17	(Exhibit 5, pg. 8)
<b>Petitioner's Spouse's car is a Toyota Camry</b>		
2. Freedom Mortgage Payment	\$1,107.75	(Exhibit 2, pgs. 36, 39)
3. GM Financial Car Payments	\$511.68	(Exhibit 3, pg. 80)
For a 2011 Dodge Truck		
4. Monthly Food, Toiletries, cleaners, etc.	\$240.00	(Exhibit 2, pgs. 32-51)
5. Gasoline	\$250.00	(Exhibit 2, pgs. 32-51)
6. Car Warranty/Protection Plan	\$85.25	(Exhibit 2, pg. 54)
For a 2011 Dodge Caravan		
7. First Bank Center Installment Loan	\$59.13	(Exhibit 2, pgs. 57 and 58, 97-108)
8. AT&T U-Verse Internet	\$46.00	(Exhibit 5, pg. 10)
9. AT&T home phone	\$35.00	(Exhibit 5, pg. 10)
10. AT&T cell phone	\$90.55	(Exhibit 5, pg. 11)
11. Oconomowoc Utilities Electricity	\$121.35	(Exhibit 2, pg. 59)
12. Oconomowoc Water	\$36.59	(Exhibit 2, pg. 60)
13. WE Energies	\$46.76	(Exhibit 5, pg. 7)
14. Dish Network	\$79.47	(Exhibit 2, pgs. 33, 35, 47, 50)
15. Netflix	\$8.44	(Exhibit 2, pgs. 33, 36, 42)
16. Group Life Insurance	\$67.48	(Exhibit 2, pgs. 20-31)
17. Fed Withholding	\$68.00	(Exhibit 2, pgs. 20-31)
18. State Withholding	\$118.00	(Exhibit 2, pgs. 20-31)
19. Social Security Withholding	\$147.00	(Exhibit 2, pgs. 20-31)
20. Medicare Withholding	\$34.00	(Exhibit 2, pgs. 20-31)
21. Health Insurance	\$143.00	(Exhibit 5, pg. 3)
22. Dental Insurance	\$11.00	(Exhibit 5, pg. 3)
23. Vision Insurance	\$4.89	(Exhibit 5, pg. 3)
24. Long Term Disability Insurance	\$3.48	(Exhibit 2, pgs. 20-21)
25. Health Care Insurance	\$125.00	(Exhibit 2, pgs. 20-31)
26. ProfitSharing (401K) Loan Repayment	\$45.78	(Exhibit 5, pg. 13)
27. Associated Bank Credit Card	\$34.00	(Exhibit 5, pg. 9)
28. Lowe's Credit Card	\$45.00	(Exhibit 5, pg. 16)
29. AmericanTV	\$45.00	(Exhibit 5, pg. 5)

#### OTHER DEBTS

30. Shelble Law Firm Debt Collection	\$90.00	(Exhibit 2, pgs. 71-77)
31. 31 Forward Dental of Oconomowoc	\$50.00	(Exhibit 2, pg. 69)
32. Regional Acceptance Association	\$150.00	(Exhibit 2, pg. 67)
For a 2010 Jeep Patriot		
33. Traub Chiropractic	\$65.00	(Exhibit 2, pgs. 84-93)
34. Pearle Vision \$994.00	\$50.00	(Exhibit 2, pg. 96)
35. United Recovery Systems	\$50.00	

Regrettably, not all of the claimed expenses can be allowed as basic and necessary expenses for maintaining Petitioner's spouse, **although some of the commercial debt may be allowed for a FINITE period of time, because the debt is so excessive that it may be considered an exceptional circumstance that is causing financial duress for Petitioner's spouse:**

**The GM car payment for the 2011 Dodge Truck will be allowed for three years. It is recommended that Petitioner's spouse sell the vehicle/liquidate it to reduce the debt. The debts for the Jeep Patriot and the monthly fee for an extended warranty on the Dodge Caravan will also be allowed for a period of three years.**

**The debt incurred from the First Bank Center Loan, the ProfitSharing Loan Repayment, the Associated Bank credit card, the Lowe's credit card, the American TV debt, and the United Recovery Systems debt will be allowed for three years. The total minimum monthly payments for those debts total \$278.00 a month, but Petitioner's spouse will have to make large payments, if she is going to get herself out of debt. So, \$600 a month will be allowed for three years to address those debts and to give Petitioner's spouse an opportunity to demonstrate that she is handling her finances in a responsible manner. Medicaid is not intended to subsidize lifestyle choices above basic maintenance and if Petitioner's spouse does not make significant progress in reducing her debts, these expenses might not be allowed in the future.**

It is not necessary for a person to have both a landline and a cell phone. Given that Petitioner is working, it is reasonable to conclude that she might need her cell phone for work. As such, the landline will not be allowed as an expense.

Satellite television and Netflix services are generally luxuries and not a basic necessity. As such, Dish Network and Netflix expenses will not be allowed.

**The debt being collected by Shelbe Law Firm will be allowed for a period of three years. The minimum payment is \$90.00 a month, but Petitioner's spouse will not be able to reduce the debt in any significant way, making only minimum monthly payments. As such, \$180.00 per month will be allowed.**

**The debt to Pearle Vision will be allowed for a period of three years. Petitioner's spouse should be able to pay off that debt in that time.**

Finally, while amounts withheld from Petitioner's spouse's paycheck may be allowed as a basic and necessary expense, the dollar amounts stated in the spread sheet are not supported by the pay information provided in Exhibit 2. Looking at the August 30, 2013 paycheck and averaging out the withholding that occurred over eight months, the figures come out to be \$105.57 per month for Federal Withholding, \$132.41 for State Withholding, \$174.03 per month for Social Security; and \$40.70 for Medicare withholding. (This is actually higher than the figures provided in the spread sheet)

Adding the foregoing allowable expenses, we have **\$4447.18** per month. **This is greater than the \$2898 MMMNA. As such, there is a reasonable basis upon which to increase the MMMNA at this time.**

**Thus, the CSIA calculation works out to be as follows:**

**\$4447.18 MMMNA**

**-\$2,660.80 Community Spouse Income Gross Income**

**(Withholding and deductions have been accounted for in the MMMNA above)**

---

**\$1786.38 Community Spouse Income Allocation**

### **CONCLUSIONS OF LAW**

There is a basis upon which to increase the MMMNA / CSIA for Petitioner's spouse for a period of three years.

THEREFORE, it is

### **ORDERED**

That the agency re-determine Petitioner's Patient Liability as of August 1, 2013 forward, using a CSIA of \$1786.38 per month. The agency will take all administrative steps necessary to complete this task within ten days. The agency shall use the \$1786.38 CSIA for three years, after which time the monthly expenses of Petitioner's spouse will have to be re-examined at the time of Petitioner's annual review.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

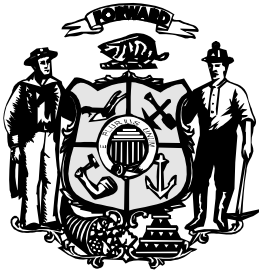
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 27th day of March, 2014.

\_\_\_\_\_  
sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 27, 2014.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
Attorney John Sage